



Natural Resources Conservation Service
6013 Lakeside Blvd.
Indianapolis, IN 46278

December 13, 2011

INDIANA BULLETIN NO. 300-12-6

SUBJECT: LTP- Stewardship Land (Easement) Compatible Use Authorization Guidance

Purpose: To provide guidance for issuing Compatible Use Authorizations for Wetlands Reserve Program (WRP), Healthy Forest Reserve Program (HFRP) and Floodplain Easement Program (EWP-FPE).

Expiration Date: UNTIL FURTHER NOTICE

This Bulletin outlines Indiana's process for reviewing and issuing Compatible Use Authorizations for WRP, EWP-FPE, and HFRP easements. This process will be used to implement each Program's policy and to ensure similar processes across programs. Individual program policies can be located in NM.440.514.62, 440.511.92, 390.514.50.

The Warranty Easement Deed is the primary document defining permitted and prohibited activity on each easement. The Warranty Easement Deed is a legally recorded document and supersedes all other program guidance. Examples of prohibited activity on a WRP easement include: buildings, cropping (including in the first year after closing), mowing (including trails and levees), water manipulation, burning, plowing, timber harvest, grazing, dumping, etc. See each individual program's Warranty Deed for additional restrictions.

Any activity not specifically permitted by the Warranty Easement Deed must be approved through a Compatible Use Authorization (CUA) (AD-1160). This would include activities prohibited by the Warranty Easement Deed but are needed for the management and enhancement of a site for wildlife habitat (e.g. prescribed burn). A CUA may be initiated through a landowner request, or through NRCS management recommendations, in consultation with the landowner. It is an agreement between NRCS and the landowner permitting a requested activity to occur onsite, under specified conditions, for a specified period of time. Compatible Use Authorizations are made at the discretion of the State Conservationist, or designee, and cannot be guaranteed approval.

CUAs will require additional onsite monitoring per National Circular 21 Easement Stewardship Lands Monitoring and Condition Documentation (June 21, 2011), and may be revoked at anytime at NRCS discretion. The U.S. Fish and Wildlife Service must be consulted for review of the impacts of a CUA on wildlife.

The field office will work with the landowner to complete the AD-1160 for proposed activities. Activities of similar duration, timing, and purpose may be combined together on one request. For instance: *Invasive species treatment followed by seeding of native plants may be combined together or construction of a water control structure and the water management plan may be combined together.* All CUA requests must include a legible, detailed map of the activity location, a **CPA-52**

Environmental Evaluation (including any further evaluation of cultural resources needed), and any additional justification or plans for the proposed activity (examples include a prescribed fire plan, invasive species control plan, etc.). Compatible Use Authorization applications should be submitted to the Area Easement Program Specialist (AEPS) (or designated Area level staff) for quality assurance prior to submittal. The Area Easement Program Specialist will then forward the packet the State Biologist. Scanned CUA application packets are preferred, but the *original* landowner signature must be retained in the field office case file.

In Indiana, the State Conservationist has delegated the authority to approve certain CUA activities to the Area Conservationists (see the list below). These activities have received concurrence from U.S. Fish and Wildlife Service based on the specifications below, and do not need further USFWS review. **Any** deviation from these specifications will require further U.S. Fish and Wildlife Service Review and State Conservationist approval and should be forwarded to the State Biologist by the AEPS.

Compatible Use Activities eligible for Area Conservationist approval:

- Cropping the First Growing Season After Closing- If authorized through a CUA, the landowners may plant a crop during the spring following the easement recordation when the easement is recorded after October 1, provided the crop is planted before July 1. The producer is not eligible for benefits through Farm Service Agency. A template CUA for cropping will be available on the Indiana SharePoint=>Programs=>Easements General =>Compatible Uses
- Operation and Maintenance (O&M) - Unless the activities are being paid for by NRCS, all engineering and planting, AND operation and maintenance activities associated with the engineering and plantings will require a Compatible Use Authorization. Examples for this type of activity include: mowing levees, repairing muskrat damage, weed control, and any other activities that are **not** paid for by NRCS. Weed control after tree planting would not require a CUA if it is included in the Conservation Plan of Operation (AD-1155) AND is receiving funding.

All WRP projects that include engineering practices will include the attached Operation and Maintenance Agreement. The bulleted section of the attachment must be modified to match the planned practices. This O&M agreement will be signed and attached to the AD-1160 CUA request, as support documentation. It is recommended this CUA request be signed and submitted at the same time the landowner accepts the engineering plans. The operation and maintenance plan should also include any mowed trails needed to access engineered practices for the purposes of O&M. Mowed trails will be no more than 10 feet wide. The total length of the O&M trails will not exceed the length of the easement perimeter, but may be located in the interior of the easement. No trails will be mowed adjacent to roads, or other non-easement lanes or rights-of-ways that could be used for access. Any existing right-of-ways included in the recorded easement should be used as trails whenever possible and counted towards the O&M trail total. A map of the proposed trail locations should be included with the request.

Mowing for any reason, including O&M (such as levee maintenance), may be completed no more than one time per year, outside of the ground-nesting bird season (June 1- August 15). Additional Threatened and Endangered species specifications may apply, such as outside of the endangered snake (Northern Copperbelly water snake and Eastern Massasauga rattlesnake) activity dates in the snakes' ranges (April 1 – October 31). The Toolkit Threatened and Endangered Species tool will be used to determine if an endangered snake has been identified near an easement through the Heritage Database. A template CUA for O&M will be available on the Indiana SharePoint=>Programs=>Easements General =>Compatible Uses. Operation and Maintenance AD-1160s may have up to a 10-year duration. Trails above and beyond the requirement for operation and maintenance of engineering structures, or the specifications in this section, will be forwarded for State Conservationist review.

Compatible Use Authorizations approved or denied by the Area Conservationists will be entered into the National Easement Staging Tool (NEST) by the AEPS. A letter will be sent to the participant regarding the specifications of the CUA, along with a copy of the approved or denied AD-1160. A copy of the letter and AD-1160 will be provided to the Field Office, and the original signature mailed to the State Easement Program Specialist for the official file.

Compatible Use Authorizations Requiring State Conservationist Approval

All other activities require State Conservationist approval. The AEPS will forward the requests to the State Biologist for review and State Conservationist approval or denial. In Indiana, specific parameters have been set for the following activities.

- Food Plots-If authorized through a CUA, food plots are permitted on no more than 5% of the easement acreage. However, the **total** area of trails and food plots combined will not exceed 5% of the easement acreage. Food plots may be annual or perennial in nature, but may not be harvested. Location, configuration, and spatial arrangement must be described and shown on a map. Food plot specifications will follow the Field Office Technical Guide Standard 645 Upland Wildlife Management. Only 1/3 of the total acreage allotted to annual food plots may be planted in any given year, and rotated through the designated area. Food Plot CUAs will have a six (6) year approval timeframe. The U.S. Fish and Wildlife Service has concurred with these specifications. A template CUA for food plots will be available on the Indiana SharePoint=>Programs=>Easements General =>Compatible Uses.
- Trails-Access trails, nature trails, walkways, etc., above and beyond those needed for the O&M activities previously described, require State Conservationist approval. Trails that are approved may not exceed 10-foot in width. Mowing cannot occur more than once per year, and must take place outside of the ground-nesting bird season in all of Indiana (June 1- August 15), and outside of the endangered snake (Northern Copperbelly water snake and Eastern Massasauga rattlesnake) activity dates in the snakes' ranges (April 1 - October 31), as identified by the Toolkit Threatened and Endangered Species tool. The **total** area of all trails and food plots combined will not exceed 5% of the easement acreage. A map designating the location and length of the trails must be included with the CUA request. A template CUA for trails will be available on the Indiana

SharePoint=>Programs=>Easements=>Compatible Uses. Compatible Use Authorizations for Trails will have up to a ten (10) year approval timeframe.

- Disturbance activities to maintain early successional habitat – Disturbance activities include, but are not limited to, strip disking, strip spraying, and prescribed burning. Compatible Use Authorizations for disturbance activities will have a ten (10) year approval timeframe. Note that prescribed burning CUAs must include a copy of the burn plan prepared by a qualified individual. Firebreaks should be included as part of the burn plan.

Compatible Use Authorizations approved or denied by the State Conservationist will be entered into the National Easement Staging Tool (NEST) by the State Easement Program Specialist, and scanned for the field office contract files. A letter will be sent to the participant regarding the specifications of the CUA, and a copy of the approved or denied AD-1160. Compatible Use Authorizations are not an appealable decision.

If you have questions concerning this bulletin please contact Teresah P. Caire, Assistant State Conservationist for Farm Bill Programs, or Brianne Lowe, State Easement Program Specialist, or Dave Stratman, State Biologist at 317-290-3200, ext. 3

/s/

JANE E. HARDISTY
State Conservationist

Attachments

cc: Jeff Kiefer, USFWS, Bloomington, IN
Dan Ernst, IDNR, Division of Forestry, Indianapolis, IN
Gary Langell, IDNR, Division of Fish and Wildlife, Indianapolis, IN